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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CHARLES CAMPBELL et al.,
Plaintiffs and Respondents,
v.
STEVEN LOPEZ,
Defendant and Appellant.

A122771

(City & County of San Francisco
Super. Ct. No. 463284)

Steven Lopez appeals from a judgment entered pursuant to a motion to enforce a settlement brought under Code of Civil Procedure section 664.6. He contends the judgment materially departs from the terms of the settlement and from findings made by the court when it ruled on the motion to enforce the settlement. Respondents Charles and Glenna Campbell assert the judgment accurately reflects the parties' settlement and is supported by substantial evidence. We agree, and therefore affirm the judgment.

BACKGROUND

This case arises from the dissolution of a partnership formed to operate a San Francisco art gallery. Charles Campbell founded the Charles Campbell Gallery in or around 1971 and operated it continuously until he retired in 2006. The gallery was housed in a building on Chestnut Street owned by the Campbells through the Charles and Glenna Campbell Revocable Trust.

Campbell hired Lopez to help manage the gallery in 2002, when Campbell was 87 years old. In 2004, he and Lopez formed a general partnership, Campbell Gallery Partners, for the purpose of owning and operating the gallery.

In 2006, at the age of 91 and suffering from macular degeneration, Campbell notified Lopez he intended to disassociate from the partnership and sell the Chestnut Street building. The complaint alleges that around this time Campbell discovered that Lopez had fraudulently caused a provision to be added to the lease to allow him to rent the gallery premises for \$1,000 per month in perpetuity. The Campbells sued Lopez for dissolution of the partnership, an accounting, fraud, elder abuse, and declaratory relief. Lopez and his domestic partner, Eric Koehler, cross-complained against the Campbells for breach of contract, fraud, negligence, conversion, defamation, breach of fiduciary duty and various other causes of action.¹

The parties settled at a court-supervised settlement conference after six months of litigation. The terms of the settlement were reported to the court by the Campbells' counsel as follows: "Mr. and Mrs. Campbell will pay to Mr. Castricone's client [Lopez and Koehler] cash in the sum of \$50,000. It will be paid by check, and the payee on the check will be determined by Mr. Castricone and his clients, and they'll let us know exactly who the check is to be made payable to. And our expectation is we will make that 50,000-dollar payment within ten days of today's date. [¶] All parties will waive any claims they have to recover costs or attorney's fees from the other side. The complaint and the cross-complaint will be dismissed with prejudice. [¶] The defendant and cross-complainants will have the right to continue a gallery business at a location other than the one at which it is operated now, and they agree that they will vacate the premises at which they are currently operating the art gallery by April 22. On April 22 they'll turn

¹ The cross-complaint also named Paul Thiebaud as a cross-defendant. Thiebaud was subsequently dismissed from the action and is not a party to this appeal.

over the keys to the current premises to my clients. [¶] Any art that is currently in the gallery on consignment, the defendant and cross-complainants will be able to take that consigned art with them to their new location, and they will not owe Mr. Campbell any of the proceeds of the sale of that consigned art. [¶] All of the art that's in the current premises that is personally owned by Mr. or Mrs. Campbell will be left behind and will remain the property of Mr. and Mrs. Campbell. [¶] Any revenues that the defendants/cross-complainants have received from the sale of consigned art since November of 2006 is their property. They don't owe any of the money to Mr. or Mrs. Campbell. [¶] . . . [¶] The defendants and cross-complainants will not have the right to use the name Charles Campbell Gallery for their new gallery, but they will be permitted to say that they are the successors to the Charles Campbell Gallery. [¶] All of the furniture that is located in the gallery now, not including built-in furniture, but moveable furniture, will be taken by defendants and cross-complainants with them when they vacate the premises, except that they will leave behind Mr. Campbell's desk—and we all know which one that is—and . . . a Chinese chest, your honor, will be left behind, and the file cabinet that has Mr. Campbell's files will also be left behind by the defendants and cross-complainants. And all of Mr. Campbell and Mrs. Campbell's personal property that's in the gallery will also be left when the defendants and cross-complainants vacate the premises.”

Other stated terms concerned future consignment sales of art owned by the Campbells, Lopez's retention of the gallery's computer equipment, website, phone numbers and URL, and the division of books, catalogs and posters. The court confirmed that all parties and their counsel agreed to the terms of settlement as stated on the open record. Counsel also stipulated the settlement was immediately enforceable under Code of Civil Procedure section 664.6.

Three months later, the Campbells moved to enforce the settlement. They asserted the parties could not agree on a division of the library; that Lopez threatened to remove

from the gallery some 80 to 100 pieces of art and other personal property owned by the Campbells; and that he was refusing to vacate the gallery premises until the ownership of the artwork and the library were resolved. In opposition, Lopez asserted the settlement did not allocate ownership over a category of works he referred to as “gallery inventory” artwork, which, he maintained, were neither being held for sale on consignment nor personally owned by the Campbells.

Following an evidentiary hearing held April 25, 2008, the court granted the Campbells’ motion to enforce the settlement and entered its judgment. The court found that there was no category of “gallery inventory” art that was owned by the gallery and unaccounted for in the settlement. Accordingly, all non-consigned art (with the exception of one painting the parties agreed Lopez would keep) was to remain with the Campbells. The court also found the Campbells had paid Lopez \$50,000 pursuant to the settlement; that, per the parties’ stipulation, Lopez would vacate the gallery by April 30, 2008; and that at the April 25, 2008, hearing, the parties agreed to a specific division of the books and other items.

The judgment provides, *inter alia*, that: “Steven Lopez and Eric Koehler may remove from the premises only the art that is there ‘on consignment’ and the painting by James Weeks known as ‘Piano and Man.’ Steven Lopez and Eric Koehler will not have to pay Charles or Glenna Campbell any of the proceeds that they receive from sales of the consigned art that they are hereby authorized to take with them. Steven Lopez and Eric Koehler shall leave behind at the premises all other art, which is found by the Court to be the personal property of Charles Campbell or Glenna Campbell or both of them. . . .”

The judgment also assigned 20 of 30 books and catalogs identified on a document introduced as Exhibit 3 to Lopez and Koehler, and directed that they leave at the gallery premises “(1) All books and catalogs listed on said Exhibit 3 that are not identified in the preceding paragraph; and (2) All of the books and catalogs that, prior to the hearing on April 25, 2008, neither Charles nor Glenna Campbell had authorized them to remove,

which are found by the Court to be the personal property of Charles Campbell or Glenna Campbell or both of them.”

On July 25, 2008, the Campbells filed an ex parte application for a temporary restraining order to prohibit Lopez and Koehler from selling several works of non-consigned art in violation of the judgment. The court granted the application and issued an order that prohibited defendants “from selling any art work that was not consigned to them for sale, or that is not owned by either or both of them.” Lopez filed a timely appeal from the judgment.

DISCUSSION

I. The Artwork

Lopez’s primary contention is that the settlement did not resolve the ownership of the “gallery inventory” category of art, i.e., art that was neither on consignment nor owned by the Campbells, but which Lopez claims was owned by the partnership. Lopez asserts the judgment is inconsistent with the terms of the settlement because it identifies, as belonging to the Campbells *all* nonconsignment art at the gallery. The Campbells maintain that the court appropriately found the settlement divided all of the art in the gallery into only two categories: between consignment works and art owned by the Campbells. They are correct.

“A trial court, when ruling on a section 664.6 motion, acts as a trier of fact. [Citation.] Section 664.6’s ‘express authorization for trial courts to determine whether a settlement has occurred is an implicit authorization for the trial court to interpret the terms and conditions to settlement.’ [Citation.] The proper standard of review, therefore, is whether the trial court’s ruling . . . is supported by substantial evidence.” (*Skulnick v. Roberts Express, Inc.* (1992) 2 Cal.App.4th 884, 889; *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911.) “ ‘Such evidence “must be reasonable in nature, credible, and of solid value. . . .” [Citation.]’ [Citation.] It is an oft-repeated rule that an order challenged on appeal ‘is presumed correct and all intendments and presumptions are indulged to support

the order on matters to which the record is silent. It is appellant's burden to affirmatively demonstrate error and, where the evidence is in conflict, [the appellate] court will not disturb the trial court's findings.' ” (*Cochran v. Rubens* (1996) 42 Cal.App.4th 481, 486.)

Here, the trial court determined the settlement agreement did not create a “gallery inventory” category of art, but, rather, divided all artwork between consigned art and art personally owned by the Campbells. Its determination is supported by substantial evidence. In reaching its decision, the court considered the transcript of the hearing convened to memorialize the terms of the settlement and testimony by Lopez and his attorney. The transcript confirms that neither Lopez nor his counsel mentioned any third category of art at the hearing, even after the Campbells' attorney stated the terms of the proposed settlement and the court specifically inquired of all parties whether there were any additional terms. At the April 25, 2008, hearing on the motion to enforce the settlement, the court asked Lopez's attorney whether he had intended at the settlement conference to reserve from the settlement a third category of art. Counsel responded when the case was settled, he “believed that there was art on consignment and art owned by the Campbells, and I cannot recall, to be honest with you, whether or not I knew of any additional art that may have been there.” Moreover, he testified that at that time he believed the settlement resolved all issues in the litigation “subject to what was to be defined afterwards with the art and the art catalogs, the posters and the personal property and that type of thing.” He also agreed that a draft settlement agreement prepared by the Campbells' attorney that he had edited after the settlement hearing divided all of the art in the gallery between consigned art and art belonging to the Campbells. Campbell submitted a declaration that confirmed there were only two categories of art in the gallery: consignment art, and “all other art, which is personally owned by me or Mrs. Campbell.” When Lopez testified, he was unable to identify any works of art sold to or whose title was held by the partnership, rather than the Campbells. There is ample

evidence to support the trial court's determination that under the settlement all art other than consigned works was the personal property of the Campbells, and that there was no third category of "gallery inventory." There is no inconsistency between that determination and the settlement or judgment. Accordingly, we reject Lopez's claim of error.

II. *Books and Catalogs*

Lopez also contends the judgment misstates the court's findings concerning the division of the gallery's books and catalogs (library) between Lopez and the Campbells. Here too, we disagree. As part of the settlement, the parties agreed that the court would retain jurisdiction to resolve any disagreement regarding their anticipated division of the library. At the hearing on the motion to enforce the settlement, the Campbells' attorney advised the court that the parties had narrowed their dispute over the library to a list of 30 books that defendants wished to take and the Campbells wanted to keep. After a short recess, the parties stipulated that defendants could take 21 specified books and that the rest of the books on the list would remain with the Campbells. The written judgment specifies that "of the thirty (30) books or catalogs," defendants could take only those specifically identified titles.² It also directs that defendants "shall leave behind at the premises: . . . [¶] . . . [¶] (1) All books and catalogs listed on said Exhibit 3 that are not identified in the preceding paragraph; and (2) All of the books and catalogs that, prior to the hearing on April 25, 2008, neither Charles nor Glenna Campbell had authorized them to remove, which are found by the Court to be the personal property of Charles Campbell or Glenna Campbell or both of them."

² One of the books allocated to defendants, a work by Christiansen, Kanter and Strehlke, is not mentioned in the written judgment. Because the parties stipulated that defendants would receive this work and the record gives no indication that the omission was anything but inadvertent, we deem the judgment amended to include the Christiansen, Kanter and Strehlke book in the list of works assigned to defendants.

Lopez complains this allocation is incorrect because “Nowhere in the Transcripts is there mention of any Court determinations as to the ownership of books outside of said exhibit.” Not so. The parties told the court they had narrowed their dispute to a list of 60, and then 30, books that Lopez and Koehler wanted to take and the Campbells wanted to keep. They later agreed between themselves that, of those 30 disputed books, Lopez and Koehler would take 21 and the Campbells would retain the rest. The clear implication is that the books and catalogs in the gallery that were *not* included in the list of disputed items were to remain with the Campbells. The language in the judgment concerning the division of the library is therefore consistent with the parties’ agreement and is supported by the record.

III. *Other Contentions*

Lopez’s remaining contentions merit only brief discussion. He asserts that the judgment insufficiently identifies the property to which it refers—presumably, the art works—to permit efficient enforcement, in violation of rule 3.2108 of the California Rules of Court.³ It appears that this assertion was not raised below and has therefore been waived for appeal. In any event, the judgment’s reference to art “on consignment” is sufficiently specific to permit compliance and enforcement. Lopez’s further claim that the Campbells and/or their counsel fraudulently added language to the judgment that departs from the settlement agreement and the court’s findings is unsupported by any evidence.

Also unconvincing are Lopez’s assertions that (1) the court issued the temporary restraining order without a showing that it was necessary to avoid great or irreparable

³ Rule 3.2108 of the California Rules of Court states: “The court may give judgment for damages, equitable relief, or both, and may make other orders as the court deems just and equitable for the resolution of the dispute. If specific property is referred to in the judgment, whether it be personal or real, tangible or intangible, the property must be identified with sufficient detail to permit efficient implementation or enforcement of the judgment.”

injury; and (2) the Campbells sought the order for purposes of harassment.⁴ “The law is well settled that the decision to grant a [restraining order] rests in the sound discretion of the trial court. . . . [¶] A trial court will be found to have abused its discretion only when it has ‘ “exceeded the bounds of reason or contravened the uncontradicted evidence.” ’ [Citations.] Further, the burden rests with the party challenging the [trial court’s order] to make a clear showing of an abuse of discretion.” (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69; *Biosense Webster, Inc. v. Superior Court* (2006) 135 Cal.App.4th 827, 834.) The Campbells submitted evidence that Lopez and Koehler continued to offer art for sale that was owned by the Campbells after the judgment was entered. In light of that showing, the order prohibiting defendants from selling “any art work that was not consigned to them for sale or that is not owned by either or both of them” was within the court’s discretion.

Lopez has demonstrated neither legal error nor an abuse of the trial court’s discretion. Because we affirm the judgment, we will not address the Campbells’ contentions that Lopez waived his right to appeal by accepting the benefits of the judgment and that the defects in his appellate brief warrant dismissal of the appeal. Although Lopez’s arguments are unpersuasive, we are not convinced that his appeal was frivolous, i.e., that any reasonable attorney would agree it to be totally and completely without merit, or that it was taken solely for purposes of delay. (See *In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 516; Cal. Rules of Court, rule 8.276.) Accordingly, the Campbells’ request for sanctions pursuant to rule 8.276 is denied.

DISPOSITION

The judgment is deemed amended to include in paragraph seven the book by Christiansen, Kanter and Strehlke entitled *Painting in Renaissance Sienna 1420-1500*. In

⁴ We deem the notice of appeal from the judgment to encompass the postjudgment temporary restraining order.

all other respects, the judgment and order granting the application for a temporary restraining order are affirmed.

Siggins, J.

We concur:

McGuiness, P.J.

Jenkins, J.